



INDIANA UTILITY REGULATORY COMMISSION  
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IN THE MATTER OF THE PETITION OF  
INDIANA BELL TELEPHONE COMPANY,  
INCORPORATED D/B/A SBC INDIANA,  
PURSUANT TO 170 IAC 1-1.1-4 FOR  
PROTECTION OF CONFIDENTIAL  
INFORMATION PROVIDED TO THE  
COMMISSION

CAUSE NO. 42882 **FILED**

JUL 26 2005

INDIANA UTILITY  
REGULATORY COMMISSION

On July 8, 2005, Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana ("SBC Indiana") filed its Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission"), seeking confidential treatment of an affiliate contract between SBC and Cingular Wireless LLC ("Cingular").

SBC alleged in its Petition that the information contained within the affiliate contract is considered to be confidential and proprietary. Specifically, SBC stated that the contract contained pricing schedules, volume discount, and associated revenue commitment information, which SBC stated would derive actual and potential economic value. Further, SBC alleged that it is information which is subject to efforts to maintain its secrecy.

SBC Indiana seeks confidential protection pursuant to I.C. §8-1-2-29 and the Commission's procedural rule found at 170 I.A.C. 1-1.1-4, and relies on the trade secret exception to public disclosure of public records found at I.C. §5-14-3-4 and I.C. §24-2-3-2 as the basis for its confidentiality claim.

The Commission rule found at 170 I.A.C. 1-1.1-4 establishes procedures for claiming that material to be submitted to the Commission is confidential. This rule, among other requirements, states that a written application for a finding of confidentiality must be filed on or before the date (if any) the material is required to be filed (170 I.A.C. 1-1.1-4(a)), and the application shall be accompanied by a sworn statement or testimony that describes: the nature of the confidential information, the reasons why the material should be treated as confidential pursuant to I.C. §8-1-2-29 and I.C. §5-14-3, and the efforts made to maintain the confidentiality of the material. 170 I.A.C. 1-1.1-4(b). Material filed with or submitted to the Commission prior to a finding of confidentiality is available for public inspection and copying. 170 I.A.C. 1-1.1-4(e).

Ten (10) days following receipt of an application for confidentiality the Commission may: (1) find the information to be confidential in whole or in part; (2) find the information not to be confidential in whole or in part; (3) issue a protective order or docket entry covering the information; and/or (4) find that information found to be not confidential should be filed in accordance with 170 I.A.C. 1-1.1-4. 170 I.A.C. 1-1.1-4(a). The Presiding Officer or any party may request an *in camera* inspection to hear argument on confidentiality of the material. 170 I.A.C. 1-1.1-4(c).

I.C. §8-1-2-29, a statute of specific applicability to the Commission, recognizes the relevancy of the Access to Public Records Act to the Commission's public records. I.C. §8-1-2-29(a) states:

All facts and information in the possession of the commission and all reports, records, files, books, accounts, papers, and memoranda of every nature whatsoever in its possession shall be open to inspection by the public at all reasonable times subject to I.C. 5-14-3.

Indiana's Access to Public Records Act, found at I.C. §5-14-3, begins with an unambiguous policy statement that favors public disclosure of government information. I.C. §5-14-3-1 states:

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.

The Indiana Utility Regulatory Commission, by application of the definition found at I.C. §5-4-3-2, is a "public agency:"

"Public agency" means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

I.C. §5-14-3-2 broadly defines a "public record" as:

...any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

A public agency must make its public records available for inspection and copying. “Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, **except as provided in section 4 of this chapter.**” I.C. §5-14-3-3(a)(emphasis added.)

“Section 4” of I.C. §5-14-3 (I.C. §5-14-3-4) contains two (2) lists of public records that are nondisclosable. The first list, found at I.C. §5-14-3-4(a), describes those public records that a public agency may not disclose, unless access is specifically required by state or federal statute or ordered by a court under the rules of discovery. The second list, found at I.C. §5-14-3-4(b), describes public records that are nondisclosable at the discretion of a public agency. The public records at issue in this proceeding are public records that are claimed to contain trade secrets. “Records containing trade secrets” are excepted from public disclosure under I.C.5-14-3-4(a)(4) and, therefore, fall within the category of public records that a public agency may not disclose.

The Access to Public Records Act, at I.C. §5-14-3-2, states that “[t]rade secret” has the meaning set forth in I.C. 24-2-3-2.” Indiana’s adoption of the Uniform Trade Secrets Act is found at I.C. §24-2-3, and contains the following definition:

‘Trade secret’ means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Indiana Courts describe trade secret information as containing four (4) elements: 1) information; 2) deriving independent economic value; 3) not generally known, or readily ascertainable by proper means by others who can obtain economic value from its disclosure or use; and 4) the subject of efforts, reasonable under the circumstances to maintain it secrecy. *Burk v. Heritage Food Serv. Equip., Inc.*, 737 N.E.2d 803, 813 (Ind. App. 2000.)

Such recent determinations, however, do not relieve any person desiring confidential protection of a public record to be submitted to the Commission of the obligation to petition and factually demonstrate through Direct Testimony/Affidavit that

the information should be exempt from public disclosure. They also do not bind the Commission in future proceedings from making determinations based on the facts presented at that time.

Data submitted in this cause by SBC Indiana states that this information is protected by SBC Indiana within its business structure to only those employees with a "need to know." The submitted data further asserts, with respect to the information deriving independent economic value, that disclosure of this information would be useful to current or potential competitors to evaluate market potential and/or market entry decisions. This is further supported by an affidavit of Robert L. Waters, verifying the accuracy of the information contained in the Petition and asserting grounds therefore.

The Presiding Officer, having reviewed the Motion and its accompanying data, finds that there is a sufficient basis for a preliminary determination of confidentiality with respect to the affiliate contract between SBC and Cingular.

Accordingly, SBC Indiana should hand deliver to the Commission, in a sealed envelope that is clearly marked "confidential" and with the Cause Number noted thereon, the affiliate contract at issue herein. As with all information provided to the Commission pursuant to a finding of confidentiality, the responses should be submitted on green paper, thereby readily identifying the information as confidential. This affiliate contract between Cingular and SBC Indiana should, on a preliminary basis, be handled by the Commission as confidential in accordance with I.C. §5-14-3.

Petitioner shall also file a verified response to the following questions on or before August 5, 2005:

What is the affiliate relationship between SBC Global Services, Inc. and SBC Indiana and/or Cingular?

What services or products does SBC Global Services, Inc. provide?

**IT IS SO ORDERED.**

July 26, 2005  
Date

Lorraine Hitz-Bradley  
Lorraine Hitz-Bradley, Administrative Law Judge